

August 9, 1937

Harry M. Moore, State Treasurer
State House
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Moore:

We have received your letter of July 13, 1937, with reference to the unpaid state taxes collected by Apache County and not paid to the State Treasurer.

After giving the matter some consideration, we are of the opinion that the only procedure to be followed is either that of a mandamus action against the County Treasurer of Apache County to enforce the payment of this sum into the office of the State Treasurer, or the bringing of a suit against Apache County for the amount due the State, plus interest.

There is some advantage to each of these methods of procedure, peculiar to that method. The mandamus action would dispose of the matter in a shorter time, probably, and it should be possible to dispose of the entire matter in this one action. Our Supreme Court, in several cases, has recognized the right to the remedy by mandamus in like situations; but in none of these cases has the question been raised as to the failure of the party seeking the writ of mandamus to act promptly after the right to such writ accrued. It is a general principle of law with reference to a mandamus action that the plaintiff may be defeated in its action for a writ of mandamus by a showing of negligence on the part of such person in failing to proceed promptly in making application for such a writ.

A civil action against Apache County would have the advantage of avoiding such a defense and, in addition, the State would be enabled, in such an action, to claim interest upon this sum of money, and while there may be some question as to whether the State could successfully maintain a claim for interest for the entire

Harry M. Moore, State Treas. - Aug. 9, 1937 - Page 2

period, it seems clear that the state should be entitled to interest on this money at least since the time that this money was used by the County of Apache for county purposes.

It will be necessary that we have the complete file on this matter, including the sources of information as to the amount due the State Treasurer, and any correspondence or other action taken with reference to the matter, before making a definite recommendation.

We trust that this answers your inquiry.

Very truly yours,

JOE CONWAY
Attorney General

MARK WILMER
Assistant Attorney General

E. G. FRAZIER
Assistant Attorney
General (Special)